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OFFICE OF FAIR TRADING

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The Producer Responsibility Obligations  
(Packaging Waste) Regulations 1997

# Jempac

**A report by the Director General of Fair Trading on the  
competition scrutiny of the Jempac compliance scheme**

**August 1997**

# JEMPAC

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# **1 GENERAL SUMMARY**

- 1.1 I am authorised by the Director General of Fair Trading under paragraph 7 of Schedule 1 to the Fair Trading Act 1973 to carry out a competition scrutiny of the Jempac compliance scheme as required by regulation 31 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the Regulations). This is my report.
- 1.2 Jempac is a compliance scheme which will operate mainly in South Wales. The existence of such regional schemes provides obligated companies with a further alternative method of meeting the requirements of the Regulations.
- 1.3 The Office is content that the Jempac scheme meets the requirements of the competition scrutiny under the Regulations: that is to say, it does not have, and is not likely to have, the effect of restricting, distorting or preventing competition, and it does not lead, and is not likely to lead, to an abuse of market power.
- 1.4 I therefore recommend that you should advise the Environment Agency in accordance with regulation 31(5) that you are satisfied that the Jempac scheme meets the requirements of the competition scrutiny.

## 2 THE JEMPAC SCHEME

2.1 Jem Recycling Limited (Jem) is a waste management company, specialising in recycling and recovery activities. Based in Port Talbot, West Glamorgan, Jem intends to set up a compliance scheme known as Jempac, which will service both its existing customer base and new clients under the Regulations. Jem has an annual turnover of under £3 million, and offers an integrated waste management service varying from total site waste management with site-based personnel for larger companies to skip hire and disposal for domestic or small scale construction activities. The company operates a transfer station which undertakes limited sorting of waste, in the form of segregating, granulating, shredding and baling, before arranging for its recycling or disposal.

2.2 Jempac is a regional collective compliance scheme covering South Wales. It will discharge its members' legal obligations to recover and recycle waste material and provide the Environment Agency with details of its members' aggregate obligation. It is to be set up:

on a cross-sectoral basis - accepting as members, and discharging the obligations of, companies in all stages of the packaging supply chain, ie manufacturers, convertors, packers and sellers; and

it will accept members irrespective of the type or types of packaging material they handle.

2.3 Members' obligations will be met firstly by any Packaging Waste Recovery Notes (PRNs) which a member brings to the scheme. These PRNs will be directly offset against the obligation of that member. Excess PRNs may be sold to the scheme, and can be purchased, by means of a levy, by those members which require additional PRNs to meet their obligation. Jem will also negotiate agreements with reprocessors for the recovery and recycling of relevant packaging materials, and the obtaining of the necessary PRNs. It is currently considering investing in new material processing facilities at its depot, so that recovery and recycling of certain packaging waste materials can be carried out on site. Jempac therefore anticipates supplying evidence of compliance to meet its obligations via:

those PRNs which members bring to the scheme to offset their individual obligations;

excess PRNs supplied by members which are additional to that member's requirements;

PRNs obtained through contractual arrangements with reprocessors; and  
through Jem's own recovery and recycling activities (once operational).

- 2.5 Jempac's annual membership fee will be on a sliding scale, taking into account the Environment Agency's annual registration fee and the member's sales turnover, subject to a cap of £2,250. Companies with a turnover in excess of £50 million will pay a slightly reduced fee if they join early.
- 2.6 Individual members will have to pay tonnage levies if Jempac needs to raise extra funds for the purchase of sufficient PRNs to meet that member's obligation, and the levies would be applied in direct relation to each member's tonnage obligation. The amount of the levy will be decided by Jempac in consultation with its members, based on a number of factors, including market forces, and how many surplus PRNs are already available in the scheme. All members will pay the same amount for PRNs which they require in each particular material. Jempac asserts that there will be no cross subsidisation in the tonnage levy charged beyond that allowed for by the Regulations, by, for example, meeting all recovery obligations through PRNs obtained from materials costing less to recover.
- 2.7 Members will be accepted on a first-come, first-served basis. Jem currently has around 160 customers, of whom 120 have obligations under the Regulations. Out of this number around 35 are ready to join Jempac if it is registered. In future years, as the scheme expands, Jempac may be able to cater for over 200 members, especially with the lowering of the turnover threshold from £5 million to £1 million.
- 2.8 Members may leave the scheme on 60 days' written notice; they must then discharge their obligations individually or join a different compliance scheme. Jempac may only terminate membership if the member takes actions which cause the scheme to fail to meet its obligations or if it brings the scheme into disrepute. It may also refuse to renew a firm's membership if it considers that it will not be able to discharge that firm's obligation.

### 3 THE WASTE MANAGEMENT SECTOR

#### Summary

- 3.1 The waste management sector involves the collection, initial sorting and disposal or treatment of waste. This waste comes from various sources: household, commercial, industrial, agricultural and clinical. There are three main options for the waste: landfill (where most waste is disposed of), incineration, and recycling.
- 3.2. The waste management sector comprises local authorities and private sector waste management companies, many of which are small local operators or niche suppliers (dealing, for example, solely in paper and board collection), which operate their own collections as well as contracts for local authorities. It is a fragmented sector but, after a period of consolidation, there are now several companies which operate nationally and handle many different types of waste. The largest firms include Onyx, Sita, Biffa Waste Services, Cleanaway and Shanks & McEwan, all with annual turnovers in excess of £100 million.

#### Barriers to entry

- 3.3 To set up as a waste management company which primarily handles packaging waste, a new entrant would need to rent or purchase equipment (weighbridge, loading shovels, compacters, balers, transport) and have access to a site for waste storage and limited sorting. Some recycling firms will loan sorting equipment free of charge to processors in return for delivery of the sorted waste to their plant. Overall, there do not appear to be significant start-up costs in setting up as a waste management firm handling packaging waste.
- 3.4 A new entrant would also need to obtain a licence to operate as a waste management company. To obtain a waste management licence, the firm must prove it is operated by a fit and proper person.<sup>1</sup> **The firm must also show that it has:**
- **planning permission;**
  - **an established-use certificate;**
  - **satisfied the Water Regulation Authority that it will not pollute the environment, harm human health, or damage local amenities.**

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<sup>1</sup> The applicant must not have been convicted of a relevant offence, must have technically competent management and have the finances to discharge its obligations.

**3.5 The Office is not aware of any restrictions on the number of licences issued in particular areas and the above requirements are not believed to be a significant barrier to entry.**

### **Waste markets**

3.6 Further information on the markets for the various waste streams covered by the Regulations is given in the Director General's July 1997 report on his competition scrutiny of the Valpak compliance scheme.

## **4 ASSESSMENT AND RECOMMENDATION**

### **Market definition**

- 4.1 Jempac is likely to operate, at least initially, as a relatively small scale regional compliance scheme. The Regulations allow individuals the option of arranging to discharge their obligation themselves (the ‘individual route’) but this option is unlikely to be a close substitute for membership of a compliance scheme as it does not offer the same convenience or security (in terms of immunity from prosecution) that scheme membership offers. Some waste management companies are, however, offering to obtain PRNs to offset a firm’s entire obligation, so providing the convenience of a ‘one-stop shop’. This option may be a closer substitute for joining a scheme but it is too early to judge how effective a constraint on the activities of compliance schemes this option will be in practice.
- 4.2. The most direct competition Jempac will face will be from other compliance schemes, primarily from the large scale cross-sectoral national schemes, which include Valpak, Biffpack and Wastepack. These schemes may also in turn face limited competition from sector-specific schemes such as Difpak.

### **Barriers to entry**

- 4.3 Potential new entrants wishing to set up a compliance scheme will be subject to competition scrutiny from this Office and from the Department of Trade and Industry. The Environment Agency (or Scottish Environment Protection Agency) and the Department of the Environment, Transport and the Regions (or the Scottish Office) must also be satisfied that the scheme meets their requirements. This process may delay entry and may be considered to impede entry but is unlikely to present a significant barrier for properly constituted schemes.
- 4.4 A potentially more significant entry barrier relates to exclusive contracts. In the Office’s discussions with other compliance schemes, we have been informed that they are unlikely to enter into exclusive contracts to tie up significant proportions of waste, or of recovery or reprocessing capacity. The Office will keep this area under review as long term exclusive contracts could be a significant barrier to market entry. Jempac itself does not appear to have, or intend to have, any exclusive contracts, other than where it may enter into joint venture agreements.
- 4.5. The second potential barrier to entry is that members may be tied into existing schemes for a significant period of time. The compliance schemes which have undergone competition scrutiny so far do not have unduly restrictive exit conditions. This also applies to the Jempac scheme: Jempac’s members may leave

after giving 60 days' written notice. It is unlikely that competition for new members between compliance schemes will be restricted by Jempac in this way.

- 4.6 In consultations on other schemes, some interested third parties expressed concern about links between compliance schemes and waste management companies. Jem is a comparable waste management operator in this market, whether looked at on a national or regional basis. However, the company has a turnover of under £3 million and the market for waste management firms handling packaging waste appears to have low barriers to entry. Furthermore, it is not clear that waste management companies will have significant advantages in operating compliance schemes, but, even if this proves to be true, Jempac will still face strong competition in this area from schemes such as Biffpack and Wastepack.

## **Conclusions**

- 4.7. Jempac is unlikely to have significant market power. Firms operating within South Wales are unlikely to derive any significant cost advantage from joining Jempac rather than a national or sector-specific scheme. Instead Jempac is likely to face strong competition from cross-sectoral national schemes, in particular from Valpak, Biffpack and Wastepack.
- 4.8 Jempac does not have any exclusive contracts with independent reprocessors and does not intend to enter into such contracts. This suggests that it is unlikely to tie up reprocessing capacity and thus distort competition.

## **Recommendation**

- 4.9 I recommend that you should advise the Environment Agency, in accordance with regulation 31(5), that you are satisfied that the Jempac scheme meets the requirements of the competition scrutiny.

August 1997

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**for the Director General of Fair Trading**